United Nations A/HRC/38/5/Add.1

General Assembly

Distr.: General
June 2018

Original: English

Human Rights Council
Thirty-eighth session
18 June–6 July 2018
Agenda item 6
Universal Periodic Review

Report of the Working Group on the Universal Periodic Review*

Tonga

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

* The present document was not edited before being sent to the United Nations translation services.

GE.18-10447(E)

Please recycle

1. The Kingdom of Tonga has reviewed the recommendations received during its Universal Periodic Review (UPR) on 19 January 2018 and provides the following responses. In summary, of the 110 recommendations received, 52 were noted in January and 58 recommendations required further consideration.

2. As with many small island developing states, Tonga continues to grapple with the ever-increasing threats of climate change that have recently brought an onslaught of more severe and more frequent natural disasters.

3. Following its second UPR in January 2018, Tonga was hit by a severe Category 4 Tropical Cyclone Gita, the strongest in its history. The cyclone destroyed almost 2,000 homes, damaged 85% of schools, caused the evacuation of over 4,500 people and left more than 80% of homes in Tonga without power.

4. The devastation caused by TC Gita meant that the Government's immediate priority, and already limited resources, were redirected towards the recovery and rebuilding of the country, which is anticipated to take years. This presented a challenge in the Governments domestic engagement processes in addressing the recommendations from the Working Group Report on its Third UPR.

5. It is under these circumstances that Tonga reviewed its recommendations. At this stage, Tonga takes note of all the 58 recommendations deferred from January and will continue to consider them further.

6. This addendum provides the Kingdom of Tonga's responses to the recommendations, which for clarity, are clustered below in thematic issues.

I. International treaties

7. Note:

94.1, 94.2, 94.3, 94.4, 94.5, 94.6, 94.7, 94.8, 94.9, 94.10, 94.11, 94.12, 94.13, 94.14, 94.15, 94.16, 94.17, 94.18, 94.19 94.20, 94.21, 94.22, 94.23, 94.24, 94.25, 94.26, 94.27, 94.28, 94.29, 94.30, 94.31, 94.32.

8. Tonga is committed to ensuring that it ratifies all core international human rights conventions to promote and protect the rights of its citizens. Tonga will consider acceding to the conventions, in accordance with its domestic processes.

9. Notwithstanding the fact that Tonga is not yet a member of these conventions, many of the underlying human rights principles enshrined in core human rights conventions, already form the basis for many Tongan laws.

10. With regards to recommendation 94.3, Tonga acceded to the Convention on the Rights of the Child on 6 November 1995.

11. In June 2017, His Majesty's Cabinet established a Committee comprised of relevant Ministries, Department and Agencies to consider the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to review relevant legislation. The Attorney General's Office and the Ministry of Police continue to take the lead in the assessment of Tonga's accession.

12. Tonga's position on CEDAW is stated in the interactive dialogue as recorded in the report of the Working Group on the UPR (para 11) (A/HRC/38/5).

13. However, with respect to recommendations 94.18 and 94.19, although Tonga has not yet ratified CEDAW, it is not in a position to lift is reservations at this time. Careful consideration needs to be taken into account following targeted and strategic consultations through revisiting its domestic treaty examination processes.

14. Tonga is considering ratification of the ILO Convention No. 182 (Recommendation 94.28). The Cabinet appointed Tonga National Tripartite Consultation Committee (TNCCC) has been mandated with undertaking necessary measures towards the ratification of two ILO Conventions this year, one of which is Convention No. 182. These efforts

reflect Tonga's commitment to protecting children, including from the worst forms of labour. These are inline with our CRC obligations.

15. Since becoming a member of the ILO in 2016, the TNCCC together with the Ministry of Commerce, Consumer, Trade, Innovation and Labour, have prioritised the domestic treaty examination process for the ratification of Convention No. 182. This includes the completion of a legal review by the Attorney General's Office and the engagement of a consultant to translate the Conventions. Stakeholder consultation on the ratification of Convention No.182 is scheduled to take place within the coming weeks before undertaking the constitutional process of ratification under clause 39 of Tonga's constitution.

16. Due to limited capacity, Tonga's ratification of all other ILO conventions is delayed (Recommendation 94.29) before ratification, Tonga wishes to ensure that it will have the capacity to implement the core ILO conventions effectively so they become meaningful tools for development. Moreover, it will need significant technical assistance in order to do so.

II. National human rights institution

17. Note:

94.33; 94.34; 94.35.

18. Tonga does not have the necessary resources at this point to facilitate a national human rights institution in accordance with the Paris Principles. The establishment of a national human rights institution continues to be a challenge for Tonga given its limited financial and human resources.

19. However, the functions of Ombudsman's Office operate within the standards of the Paris Principles providing an important, impartial and effective complaints resolution mechanism. It also works to promote best practices in public administration providing guidance and advice in order to ensure people are treated fairly.

20. The Ombudsman's Office continues to actively conduct outreach programmes to all of Tonga's major island groups to raise public awareness.

III. Sexual equality and discrimination

21. Note:

94.36; 94.37; 94.38; 94.39; 94.40; 94.41; 94.42; 94.43, 94.44 94.45; 94.46, 94.47.

22. The main recommendations under this theme were to: eliminate all discriminatory treatment related to sexual orientation or gender identity, and the decriminalising of same-sex consensual sex.

23. Tonga has no national policies or regulation which condone discrimination against sexual orientation and gender identity.

24. The Government continues to support the work of the 'Tonga Leiti Association' (TLA) which advocates for the rights of people with different sexual orientation or gender identity and celebrates their contribution to Tongan society in entertainment, sport and business.

25. Through government grants, the TLA has received assistance for the refurbishment of their office quarters and the provision of a vehicle to help improve their public awareness and advocacy outreach.

26. The decriminalisation of consensual sex between same sex adults is an issue that Tonga still wishes to consider further. It requires thorough, robust and comprehensive dialogue against the backdrop of cultural sensitivities and conservative Christian values of the Tongan society.

IV. Capital punishment

27. Note:

94.48; 94.49; 94.50; 94.51; 94.52.

28. As indicated in Tonga's 2nd UPR, its position on the issue of capital punishment is that Tonga will continue to retain the death penalty as the ultimate criminal sanction under its criminal justice system for the crimes of murder and treason.

29. The Tongan Courts have already set the guiding policy that the death penalty will only be used, in the context of murder, "in the rarest of rare cases when the alternative option is unquestionably foreclosed". The death penalty is seen as a deterrent, only to be used in the 'rarest of rare cases', where violence has been at its most abhorrent, the victim at its most vulnerable, the impact universally and emotionally devastating and the alternative sentences do not qualify as appropriate or acceptable alternatives.

V. Legislative frameworks

30. Note:

94.53, 94.54, 94.55, 94.56, 94.57; 94.58.

31. Tonga wishes to note the various recommendations for domestic legislative reforms and emphasizes that, in accordance with its domestic laws and processes, and available resources, it will work towards ensuring human rights are featured in its legislative frameworks.

32. With regards to Recommendation 94. 58 to prioritise work to eliminate violence against women, the Family Protection Act Coordinator has been established to focus on the successful implementation of the Act. The 'Families Free of Violence' programme further focusses on responses to violence in supporting the implementation of the Family Protection Act 2013.

33. In close collaboration with its external partners, the Government of Tonga supports initiatives such as 'The UN Women' programmes on the prevention of violence against women. The Australian Government's 'Pacific Women Shaping Pacific Development' programme has provided specific resources to assist with the implementation of the Family Protection Act 2013, as well as the Revised National Policy on Gender and Development (RNPGAD) 2014-2018. The current review of RNPGAD is scheduled for September 2018.

34. The Government of Tonga further commits, in the Revised National Policy on Gender and Development, under 'Outcome 2: Equitable access to economic assets and employment', to enable women to achieve increased access to income generating business and employment opportunities; have access to resources, markets and jobs; and access to increased incomes, assets and life choices.

35. The Government of Tonga is also committed to increasing women's participation in labour mobility schemes through the development of a 'Women's Strategy for Labour Mobility'.

VI. Conclusion

36. Tonga again wishes to record its appreciation for this opportunity, to the Human Rights Council, the Working Group and the Troika of States of Angola, Slovakia and the United Arab Emirates, in considering Tonga's third universal periodic report, and also to Member States, Observers and Non-Government Organisations for the support and constructive feedback. Tonga would also like to acknowledge, with appreciation, the UN Voluntary Trust Fund which has enabled its participation in the 38th Session of the HRC and its presentation of Tonga's formal response to the recommendations it received during its 3rd UPR.

United Nations A/HRC/38/6/Add.1

General Assembly

Distr.: General
22 June 2018

Original: English

Human Rights Council
Thirty-eighth session
18 June–6 July 2018
Agenda item 6
Universal Periodic Review

Report of the Working Group on the Universal Periodic Review*

Romania

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

* The present document was not edited before being sent to the United Nations translation services.

GE.18-10294(E)
1810294

Please recycle

1. Romania presents its response to recommendations made during the Universal Periodic Review on 16 January 2018. The following brief comments set out Romania's position on each recommendation. References are made to its National Report for the UPR third cycle.

I. Romania notes the following 37 recommendations: 5–10, 16, 17, 24, 34, 35, 44, 45, 47, 55, 87, 95, 101, 127, 143, 144, 145, 147, 148, 157, 188, 174, 175, 177-181, 194, 198, 200, 201 and partially notes recommendations 21, 66 and 67. The rationale for this position is the following

2. Regarding *recommendations 5–10 and 201* Romania has not signed the ILO Convention no. 189. Regarding the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families, Romania states that the basic principles expressed in the text are comprised in the existing national legislation which is in line with EU regulations in this area. Romania remains fully committed to the protection of rights of members of all vulnerable groups, including migrants.

3. Romania notes *recommendations 16 and 17*, adding that it has not signed the Optional Protocol to ICESCR. Romania **partially notes** *recommendation 21* only as to the ratification of ICESCR Optional Protocol.

4. As to *recommendation 24*, it is up to each national institution to establish its own procedure when designating candidates for elections for UN treaty bodies.

5. Romania notes *recommendation 34*. Currently, each institution ensures, per its field of intervention, the preparation of the sectoral national reports to international and regional human rights mechanisms and coordinates follow-up to recommendations.

6. Regarding *recommendation 35*, Romania reiterates that there is no duplication as regards the NHRI, as reflected in the National Report[1].

7. Romania notes *recommendations 44 and 45* as it considers that they have **already been complied** with. Since its EU integration, Romania transposed all six EU Directives and the European acquis in the field of gender equality. The principles of equal opportunities and equal treatment between women and men are transposed in the national legislation, institutional mechanism, public policies and are reflected at civil society level. Important concepts are regulated by the main legal act in the field, such as: direct and indirect discrimination based on sex, sexual and psychological harassment, equal pay for equal work, positive actions, multiple-discrimination, sex, gender stereotype, gender budgeting. The law also includes specific measures for implementing the gender perspective in the labour market, education, eliminating gender roles and encouraging equal participation of men and women in the decision making process. The National Agency for Equal Opportunities between Women and Men was established in 2015 with a role in implementing public policies and strategies; legislative initiatives; data collection; designing and implementing programs and awareness campaigns[2]; cooperating with central and local authorities and NGOs. Based on the above, Romania reaffirms its commitment to promote gender equality.

8. Romania notes *recommendations 47 and 148*, affirming that measures to improve the exercise by women of their rights to reproductive health are already in place, but there are no means to guarantee that public statements on this topic would be stopped as this would impede on the freedom of speech.

9. Romania notes *recommendations 55, 157, 188, 194*, as they have **already been complied** with. The Romanian legislation provides for and guarantees equal rights and unhindered access to services for all Romanian citizens and, at the same time, it prohibits and sanctions all forms of discrimination, including on ethnic grounds. Furthermore, the Romanian authorities have been taken positive measures and implemented targeted programs to ensure equal and non-discriminatory access to, among other, quality education, housing, health and employment for all citizens with an emphasis on the Roma community.

Romania also notes *recommendation 198* pointing out that it does not collect any data based on ethnicity criteria.

10. However, **Romania supports *recommendations 53–54 and 56–59*** on continuing its efforts to combat discrimination against Roma in accordance with the national legislation. The National Contact Point for Roma has the task of assessing the compliance with the cross-cutting non-discrimination criteria, equal opportunities, sustainable development, non-segregation, housing infrastructure, urban mobility or education, including through awareness campaigns. In line with its position detailed in the National Report[3], **Romania accepts *recommendations 182–187, 189-193, 195, 197*** and it will continue to implement the Romanian Government Strategy for the inclusion of Romanian citizens belonging to Roma minority 2015-2020, present the yearly implementation report to the European Commission and, based on the evaluation, improve and amend the Strategy. Programs and measures designed to strengthen the overall inclusion of the Roma community will be further developed.

11. Romania **partially notes** *recommendation 66* only as to the first thesis and brings to attention that Government Ordinance no. 137/2000 on preventing and sanctioning all acts of discrimination contains an open list of discrimination criteria as the law refers to any other criteria that can lead to an undue restriction of rights and fundamental freedoms in the political, economic, social and cultural field. With regard to the second thesis, there is no legal obligation to legalize same-sex marriage and currently there are two draft laws pending that deal with legal partnership, including for same-sex couples.

12. Given the elements presented above, Romania also **partially notes** *recommendation 67* only as to the second thesis. As to organizing a constitutional referendum, Romania recalls that this pertains to a sovereign right of the Parliament as it is within its prerogatives to adopt a law that would lead to the revision of the Constitution, but the approval of such a law shall be done only after having consulted the people by means of a referendum. Even so, a referendum as mentioned in the second thesis of the recommendation would not lead to any change in the legal framework that governs family and marriage. The Constitutional Court (decision no. 580/2016, para. 40) states that the notion of family is much broader than that proposed by the initiator of the constitutional revision and it falls under art. 26 of the Constitution on the right to intimate, family and private life. With regard to the first thesis, currently there is an ongoing debate on a draft law on civil partnership, initiated by the National Council for Combatting Discrimination (NCCD). According to the Constitution, same-sex marriages are not allowed.

13. Romania notes *recommendation 95*; the adoption of new laws and the modification of the existing legislation, takes into consideration the social interest, the legislative policy and the necessity to align the national legislation to the EU acquis, the international treaties and the ECHR jurisprudence.

14. Romania notes *recommendation 101*. The legislation in place on the enforcement of sentences and detention measures provides for sufficient safeguards to ensure the respect for human dignity, to prevent torture and inhuman treatment and to punish such offenses.

15. Romania notes *recommendation 127* adding that, concerning workers' rights, the legislation stipulates no delimitation of professions or sectors of activity and, thus, all workers fully enjoy and benefit from all rights.

16. Romania notes *recommendations 143–145* adding that topics pertaining to sexual education[4] are taught within the mandatory school curricula (biology, civic education, counselling) or the corresponding optional school subjects provided at national, regional and local levels or included in the educational offer of schools. Such topics are also approached in extracurricular activities.

17. Romania notes *recommendation 147* stating that such legislation already exists. The national legislation prohibits all forms of discrimination, thus, divorce and settlement legislation is applied indiscriminately to men and women.

18. Romania notes *recommendations 174, 175, 177–181* pointing out the following: Romania managed to develop, with the important and substantial contribution of the members of the 20 national minorities that live on its territory, a system for the protection

of their rights to ethnic, cultural, linguistic, religious identity which stands above international standards in the field. Romania is one of the few European states that assumed the highest commitments in the field of protection of 20 minority languages spoken on its territory and is doing its utmost to deliver on its commitments. The legal and institutional system designed to guarantee the respect for and promotion of the rights of persons belonging to national minorities living on its territory has proved efficient in terms of protecting and promoting their cultural, linguistic and religious identity. This system has come to be seen as a best practices model at European and international level.

19. Specifically, Romania ensures the right of every individual who freely declares that he/she belongs to a national minority to use his/her mother tongue when dealing with public authorities and judiciary, to be taught in his/her mother tongue (at all levels of education), to have religious service in his/her mother tongue, to have access to media in the mother tongue, to be involved in public life and public decision making concerning the entire society, including but not limited to issues of interest for the minority he/she belongs to. Moreover, Romania promotes cultural activities that develop the identity of persons belonging to national minorities, through substantial financial allocations geared through representative organizations of the national minorities.

20. The relevant legal framework, starting with the Constitution, is made up of numerous regulations concerning all aspects of social life. It must be emphasized that positive discrimination as regards persons belonging to national minorities is justified insofar as it concerns the protection and promotion of ethnic, cultural, linguistic and religious identity. No measures in other fields can be promoted on discriminatory basis on considerations of ethnicity or other kind of rationale as it would run against international law.

21. Concerning *recommendation 177*, Romania has already specific legislation which regulates property restitution to ethnic minorities and religious denominations, legislation validated by the Council of Europe as being is in line with the ECHR jurisprudence.

22. Regarding *recommendation 179*, Romania points out that the right of peaceful assembly is applicable without restrictions, within the requirements of the law.

23. However, **Romania supports *recommendations 176 and 199*** and it will continue to implement legislation and policies as regards the protection and promotion of the rights of persons belonging to national minorities living in Romania in all fields, in accordance with its European and international commitments.

24. Romania notes *recommendation 200*, as it has **already been complied** with. Since 2006, Romania assumed targets in the field of gender equality that were implemented through three strategic documents. Currently, the process of adopting a new National Strategy in the field for 2018-2021 is ongoing.

II. Romania supports the remaining 163 recommendations and adds the following comments on some of them

25. Romania considers that **the following recommendations are already implemented**: 23, 37, 38, 42, 50, 51, 52, 53[5], 71, 74, 100, 103, 104, 105, 196, and 203. By acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Romania recognizes CAT's competence to receive individual communications (*recommendation 23*). Concerning *recommendations 71 and 74*, the norm of law is applicable to everyone, without discrimination. Furthermore, in 2017, the codes of conduct for the members of the Government and, respectively, of the Parliament were adopted. As described in the National Report[6], *recommendation 100* is **partially implemented**; the Strategy for the development of the judiciary (2015-2020) aims at making the judiciary more efficient, accessible and at ensuring a better quality of the justice act. Romania considers *recommendation 105* **already implemented**; an efficient mechanism for lodging complaints against alleged abuses by police officers is in place within the Romanian Police. In such criminal cases the investigation is performed by the criminal prosecution bodies. Simultaneously, an internal prevention mechanism is

activated. An internal investigation is carried out in cases that do not fall under the criminal legislation. In 2015, by order of the Prosecutor General the investigation of ill-treatment allegations was organized. When police officers are being accused of inhuman or degrading treatments, the criminal cases are taken over from hierarchically inferior prosecutor's offices to superior ones, as to ensure effective independence. Prosecutors that deal mainly with this type of cases were appointed. Also, at the level of prosecutors' offices attached to the courts of appeal, prosecutors were appointed for monitoring progress of criminal investigations, in terms of length of the procedure and compliance with the ECHR jurisprudence.

26. In 2018, the Ombudsman will initiate the NHRI accreditation process (*recommendation 25*). The newly established Ombudsman for Children functions under the supervision of the Ombudsman and acts to promote and protect the rights of children under the age of 18. It is coordinated by one of the Ombudsman's deputies, appointed in April 2018 for a 5-year term. The organizational procedures are ongoing; the budget for 2018 has been approved along with the allocation of 18 positions at central and territorial structures. The protection of youth rights falls under the competence of another Ombudsman's deputies (*recommendations 29–33*).

27. Regarding *recommendations 36 and 97–99*, the procedures that must be fulfilled as to modify the Justice Laws and Criminal Codes provide the necessary guarantees in order to ensure the respect for human rights and European democratic values, including the Venice Commission's standards. The process of amending the Codes was determined by the necessity to bring their provisions in line with the decisions of the Constitutional Court and the European instruments.

28. On *recommendations 82, 83 and 96* with regard to the independence of the judiciary, Romania adds that the National Anticorruption Strategy 2016-2020 provides for the specific objective of enhancing integrity, reducing vulnerabilities and corruption risks in the judiciary. The 2017 progress report[7] on the implementation of the Strategy has been presented in April 2018.

29. Regarding *recommendation 68*, according to the Criminal Procedure Code, victims of hate crimes and of a criminal offense due to prejudices or discrimination are considered vulnerable persons and benefit from specific protection measures provided by the law. Hate crimes and hate speech cases are investigated by the Romanian Police by applying fines or initiating criminal cases. Cases exceeding their competence are referred to NCCD.

30. From January 2018, the Prosecutor General started to collect disaggregated data on criminal offenses on the discrimination criteria provided by the Criminal Code. Since 2017, the Romanian Police have taken measures to collect disaggregated data and to initiate a methodology for investigating hate crimes (*recommendations 76 and 77*).

31. On *recommendation 107*, Romania fights against the phenomenon, as assimilated in the national and EU legislation.

32. Regarding *recommendations 79–81, 129*, funding and human resources in education are provided without discrimination. There are no specific or distinct budgets for rural areas. However, additional funding for schools in rural areas is provided. The law forbids classroom segregation. Fully acknowledging the needs and particular challenges faced by disadvantaged communities, including in rural areas, affirmative measures and policies are in place to narrow the disparities and foster equal chances, especially on access to basic services, education, health, housing, transportation. On *recommendations 137–140*, Romania adds to its position[8] that increasing state funding for education remains a priority. The sectoral national strategies on education target specific needs - early school leaving, VET, tertiary education, and lifelong learning.

33. On *recommendations 130 and 132*, Romania adds to its position[9] that, since 2001, there were 15 interventions within the National Program for Women and Child Health and, in 2018, the Working Group for Women and Child Health is reinforced.

34. The National Health Strategy 2014-2020 has a distinct chapter on HIV/AIDS which focuses on policies and legislation, management and intervention, prevention, monitoring,

treatment, nutrition, minimizing the occupational biological risks. The National HIV Programme has been implemented nationwide since 2001 (*recommendations 133–135*).

35. Regarding *recommendation 171*, in 2017, the Prosecutor General consolidated the supervision mechanism tested from 2015 by establishing a protection mechanism for institutionalized persons with disabilities applicable to criminal proceedings. The mechanism has a double component: (a) functional by monitoring, control and analysis performed by the prosecutors' offices attached to the courts of appeal and the Prosecutor General's Office; (b) procedural aiming at insuring the real and effective exercise of the victims' rights.

Notes:

[1] See A/HRC/WG.6/29/ROU/1, paras. 37–40.
[2] See A/HRC/WG.6/29/ROU/1, endnote 28.
[3] See A/HRC/WG.6/29/ROU/1, paras. 59–67.
[4] See also A/HRC/WG.6/29/ROU/1, para. 109.
[5] For recommendations 52–53, please also see the 2017 Activity Report of the National Council for Combating Discrimination: http://api.components.ro/uploads/1d3a0bf8b95391b825aa56853282d5da/2018/05/Activity_Report_CNCD_2017.pdf
[6] See A/HRC/WG.6/29/ROU/1, endnote 7.
[7] Available at https://sna.just.ro/docs/pagini/53/Raport%20monitorizare%20MJ.pdf
[8] See A/HRC/WG.6/29/ROU/1, paras. 110–113.
[9] See A/HRC/WG.6/29/ROU/1, paras. 107–109.